

PETITION FOR A WRIT OF HABEAS CORPUS BY A PERSON IN STATE CUSTODY

Name Mijangos Jaime
 (Last) (First) (Initial)

Prisoner Number E-81550

Institutional Address P.O. Box-689, G-322L

Soledad, CA 93960-0689

FILED

OCT 30 2007

RICHARD W. WIEKING
 CLERK, U.S. DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA

**UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA**

Jaime Mijangos
 (Enter the full name of plaintiff in this action.)

vs.

A.P. Kane, Warden CTF, Respondent;

Arnold Schwarzenegger, Governor,

and Board of Parole Hearings,

Real Parties in Interest.

(Enter the full name of respondent(s) or jailor in this action)

CV**07****5508**

Case No. _____
 (To be provided by the clerk of court)

**PETITION FOR A WRIT
 OF HABEAS CORPUS**

(PR)**E-filing****Read Comments Carefully Before Filling In****When and Where to File**

You should file in the Northern District if you were convicted and sentenced in one of these counties: Alameda, Contra Costa, Del Norte, Humboldt, Lake, Marin, Mendocino, Monterey, Napa, San Benito, Santa Clara, Santa Cruz, San Francisco, San Mateo and Sonoma. You should also file in this district if you are challenging the manner in which your sentence is being executed, such as loss of good time credits, and you are confined in one of these counties. Habeas L.R. 2254-3(a).

If you are challenging your conviction or sentence and you were not convicted and sentenced in one of the above-named fifteen counties, your petition will likely be transferred to the United States District Court for the district in which the state court that convicted and sentenced you is located. If you are challenging the execution of your sentence and you are not in prison in one of these counties, your petition will likely be transferred to the district court for the district that includes the institution where you are confined. Habeas L.R. 2254-3(b).

ORIGINAL

5508
SBA

new

530

1 Who to Name as Respondent

2 You must name the person in whose actual custody you are. This usually means the Warden or
3 jailor. Do not name the State of California, a city, a county or the superior court of the county in which
4 you are imprisoned or by whom you were convicted and sentenced. These are not proper
5 respondents.

6 If you are not presently in custody pursuant to the state judgment against which you seek relief
7 but may be subject to such custody in the future (e.g., detainees), you must name the person in whose
8 custody you are now and the Attorney General of the state in which the judgment you seek to attack
9 was entered.

10 A. INFORMATION ABOUT YOUR CONVICTION AND SENTENCE

11 1. What sentence are you challenging in this petition?

12 (a) Name and location of court that imposed sentence (for example; Alameda
13 County Superior Court, Oakland):

14 Los Angeles County Superior Court, Los Angeles

15 Court

Location

16 (b) Case number, if known BA019784

17 (c) Date and terms of sentence 12-27-1990, 18 years to life.

18 (d) Are you now in custody serving this term? (Custody means being in jail, on
19 parole or probation, etc.) Yes X No

20 Where?

21 Name of Institution: Correctional Training Facility

22 Address: P.O. Box 686, Soledad, CA 93960-0686

23 2. For what crime were you given this sentence? (If your petition challenges a sentence for
24 more than one crime, list each crime separately using Penal Code numbers if known. If you are
25 challenging more than one sentence, you should file a different petition for each sentence.)

26 Penal Code Sections 187, 12022.5 and 12022.7.

3. Did you have any of the following?

Arrestment: Yes X No

Preliminary Hearing: Yes X No _____

Motion to Suppress: Yes _____ No X

4. How did you plead?

Guilty _____ Not Guilty X Nolo Contendere _____

Any other plea (specify) _____

5. If you went to trial, what kind of trial did you have?

Jury _____ Judge alone X Judge alone on a transcript _____

6. Did you testify at your trial? Yes X No

7. Did you have an attorney at the following proceedings:

(a) Arraignment Yes X No

(b) Preliminary hearing Yes X No _____

(c) Time of plea Yes X No _____

(d) Trial Yes X No _____

(e) Sentencing Yes X No _____

(f) Appeal Yes X No _____

(g) Other post-conviction proceeding Yes _____ No X

8. Did you appeal your conviction? Yes _____ No _____

(a) If you did, to what court(s) did you appeal?

Court of Appeal Yes X No

Year: 1991 Result: Denied

Supreme Court of California Yes _____ No X

Year: _____ Result: _____

Any other court Yes _____ No X

Year: _____ Result: _____

(b) If you appealed, were the grounds the same as those that you are raising in this

petition? Yes _____ No X

(c) Was there an opinion? Yes _____ No X

(d) Did you seek permission to file a late appeal under Rule 31(a)?
Yes _____ No X

If you did, give the name of the court and the result:

9. Other than appeals, have you previously filed any petitions, applications or motions with respect to this conviction in any court, state or federal? Yes _____ No X

[Note: If you previously filed a petition for a writ of habeas corpus in federal court that challenged the same conviction you are challenging now and if that petition was denied or dismissed with prejudice, you must first file a motion in the United States Court of Appeals for the Ninth Circuit for an order authorizing the district court to consider this petition. You may not file a second or subsequent federal habeas petition without first obtaining such an order from the Ninth Circuit. 28

NOTE: All information hereinafter regards exhaustion of petition for writ of habeas corpus challenging 09-13-05 Board of Parole Hearings denial. U.S.C. §§ 2244(b).]

(a) If you sought relief in any proceeding other than an appeal, answer the following questions for each proceeding. Attach extra paper if you need more space.

I. Name of Court: Los Angeles County Superior Court

Type of Proceeding: Petition for Writ of Habeas Corpus

Grounds raised (Be brief but specific):

a. Petitioner filed 2 Grounds exhausting the same

b. 2 Grounds filed herein. See Petition herein at

c. page 1, footnote 1, for a synopsis of state

d. court exhaustion.

Result: Denied (Exhibit I) Date of Result: 01-30-07

II. Name of Court: Cal. Ct. of Appeal, 2nd App. Dist.

Type of Proceeding: Petition for Writ of Habeas Corpus

Grounds raised (Be brief but specific):

a. Petitioner filed 2 Grounds exhausting the 2
b. grounds filed herein.
c. _____
d. _____

Result: Denied (Exhibit J) Date of Result: 03-20-07

III. Name of Court: California Supreme Court
Type of Proceeding: Petition for Writ of Habeas Corpus
Grounds raised (Be brief but specific):

a. Petitioner filed 2 Grounds exhausting the 2
b. Grounds filed herein.
c. _____
d. _____

Result: Denied (Exhibit K) Date of Result: 09-19-07

IV. Name of Court: _____

Type of Proceeding: _____

Grounds raised (Be brief but specific):

a. _____
b. _____
c. _____
d. _____

Result: _____ Date of Result: _____

(b) Is any petition, appeal or other post-conviction proceeding now pending in any court?

Yes _____ No X

Name and location of court: _____

B. GROUNDS FOR RELIEF

State briefly every reason that you believe you are being confined unlawfully. Give facts to support each claim. For example, what legal right or privilege were you denied? What happened? Who made the error? Avoid legal arguments with numerous case citations. Attach extra paper if you

1 need more space. Answer the same questions for each claim.

2 [Note: You must present ALL your claims in your first federal habeas petition. Subsequent
3 petitions may be dismissed without review on the merits. 28 U.S.C. §§ 2244(b); McCleskey v. Zant,
4 499 U.S. 467, 111 S. Ct. 1454, 113 L. Ed. 2d 517 (1991).]

5 **THE PETITIONER HAS A CONSTITUTIONALLY PROTECTED LIBERTY**
6 **Claim One: INTEREST IN PAROLE AND DUE PROCESS RIGHTS UNDER THE 5TH AND 14TH**
7 **AMENDMENTS OF THE U.S. CONSTITUTION, THAT CAN NOT BE INFRINGED UPON BY AN**
8 **UNCONSTITUTIONAL AND UNREVIEWABLE STATE COURT STANDARD OF LAW.**

9 Supporting Facts: See Petition for Writ of Habeas Corpus pages 1-3
10 and Memorandum of Points and Authorities at pages 11-15 and
11 Ground I a pages 15-20 attached hereinafter.

12 **THE BOARD DEPRIVED PETITIONER OF HIS LIBERTY INTEREST AND DUE**
13 **Claim Two: PROCESS RIGHTS BY REPEATEDLY DENYING HIM PAROLE BASED ON THE**
14 **UNCHANGING FACTS OF THE COMMITMENT OFFENSE AND IGNORING THE EVIDENCE OF**
15 **HIS REHABILITATION PROGRAMMING AND CONTINUED EXEMPLARY BEHAVIOR WHILE**
16 **INCARCERATED.**

17 Supporting Facts: See Petition for Writ of Habeas Corpus pages 1-2,
18 4-10 and Memorandum of Points and Authorities at pages 11-15
19 and Ground II at pages 21-48 attached hereinafter.

20 Claim Three:

21 Supporting Facts:

22
23 If any of these grounds was not previously presented to any other court, state briefly which
24 grounds were not presented and why:

25 All 2 Grounds raised herein have been fully and timely exhausted
26 in state court(s) and are ripe for federal adjudication.

1 List, by name and citation only, any cases that you think are close factually to yours so that they
 2 are an example of the error you believe occurred in your case. Do not discuss the holding or reasoning
 3 of these cases: Greenholtz 442 U.S. 1; Allen 542 U.S. 368; Hill 472 U.S. 445; McGillion
 4 306 F.3d 895; Biggs 334 F.3d 910; Irons v. Carey 479 F.3d 658; Rosen-
 5 krantz v. Marshall 444 F.Supp.2d 1063; Martin v. Marshall 431 F.Supp.2d 1038;
 6 Sanchez v. Kane 444 F.Supp.2d 1049; Willis v. Kane 485 F.Supp.2d 1126; In re Ram-
 7 irez 94 Cal.App.4th 549; In re Rosenkrantz 29 Cal.4th 616; In re Dannenberg 35 Cal.
 8 4th 1061; In re Scott 119 Cal.app.4th 871 and 133 Cal.App.4th 573; In re E. Smith
 9 114 Cal.App.4th 343; In re M. Smith 109 Cal.App.4th 489; In re W. Lee 143 Cal App.4th
 10 1400; In re Elkins 144 Cal.App.4th 475; In re Weider 145 Cal.App.4th 570; In re Law-
 11 rence 150 Cal.App.4th 1511; In re Barker 151 Cal.App.4th 346; etc....
 12 Do you have an attorney for this petition? Yes _____ No X

13 If you do, give the name and address of your attorney:
 14 _____
 15 _____
 16 _____
 17 _____
 18 _____
 19 _____
 20 _____
 21 _____
 22 _____
 23 _____
 24 _____
 25 _____
 26 _____
 27 _____
 28 _____

WHEREFORE, petitioner prays that the Court grant petitioner relief to which s/he may be entitled in
 this proceeding. I verify under penalty of perjury that the foregoing is true and correct.

Executed on

10/21/07

Date

[Signature]
 Signature of Petitioner

(Rev. 6/02)